FILE COPY

Office-Supreme Court, U.S.
FILED
NOV 3 1960
JAMES R. BROWNING, Clerk

No. 384

In the Supreme Court of the United States

OCTOBER TERM, 1960

AMERICAN NATURAL GAS COMPANY, ET AL.,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

CHARLES K. RICE,
Assistant Attorney General,

HARRY BAUM,
JOSEPH KOVNER,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	3
Conclusion	10
Appendix	11

CITATIONS

Cases:

Commissioner v. *Gillette Motor Co.*, 364 U.S. 130	8, 9
Corneli v. *Moore*, 257 U.S. 491	4
Credit and Investment Corp v. *Commissioner*, 47 B.T.A. 673	7
Dear Publication & Radio, Inc. v. *Commissioner*, 274 F. 2d 656, affirming 31 T.C. 1168	7
Helvering v. *Flaccus Leather Co.*, 313 U.S. 247	7
Helvering v. *Hammel*, 311 U.S. 504	7
Midwest Motor Express v. *Commissioner*, 251 F. 2d 405, certiorari denied, 358 U.S. 875	8, 9
Mugler v. *Kansas*, 123 U.S. 623	4
North American Co. v. *S.E.C.*, 327 U.S. 686	4
Samuels v. *McCurdy*, 267 U.S. 188	4
Union Bridge Co. v. *United States*, 204 U.S. 364	4
United States v. *Central Eureka Mining Co.*, 357 U.S. 155	4

Statutes:

Act of October 31, 1951, c. 661, 65 Stat. 733, Sec. 1	6
Bank Holding Company Act of 1956, c. 240, 70 Stat. 133, Secs. 1101-1103	8

Statutes—Continued

	Page
Internal Revenue Code of 1939:	
Sec. 112(a) (26 U. S. C. 1952 ed., Sec. 112 (a))	11
Sec. 112(f) (26 U. S. C. 1952 ed., Sec. 112 (f))	6, 7, 8
Sec. 112(m) (26 U. S. C. 1952 ed., Sec. 112 (m))	8
Sec. 117(j) (26 U. S. C. 1952 ed., Sec. 117 (j))	4, 7, 8, 9, 11
Secs. 371-373 (26 U.S.C. 1952 ed., Secs. 371-373)	7
Internal Revenue Code of 1954:	
Sec. 1033(d) (26 U. S. C. 1958 ed., Sec. 1033 (d))	8
Sec. 1033(e) (26 U. S. C. 1958 ed., Sec. 1033 (e))	8
Secs. 1101-1103 (26 U.S.C. 1958 ed., Secs. 1101-1103))	8
Public Utility Holding Company Act of 1935, c. 687, 49 Stat. 803:	
Sec. 1 (15 U. S. C. 1958 ed., Sec. 79a)	13
Sec. 11 (15 U. S. C. 1958 ed., Sec. 79k)	2, 3, 14
Revenue Act of 1916, c. 463, 39 Stat. 756	6
Revenue Act of 1921, c. 136, 42 Stat. 227:	
Sec. 214(a)(12)	6
Sec. 234(a)(14)	6
Revenue Act of 1924, c. 234, 43 Stat. 253, Sec. 203(b)(5)	6
Miscellaneous:	
61 Cong. Record, Part 5, pp. 5294, 5296	6
83 Cong. Record, Part 5, p. 4928	7
97 Cong. Record, Part 8, pp. 10348	6
House Hearings, General Revenue Revision of 1953, Part 2, pp. 1325-1326	8
House Hearings, Revenue Revisions of 1947-1948, Part 3, pp. 1400-1404, 1592-1594	8
H. Rep. No. 798, 82d Cong., 1st Sess., pp. 104 (2 U.S.C. Cong. & Adm. Service (1951) 2598-2602)	6

Miscellaneous--Continued

	Page
H. Rep. No. 1128, 86th Cong., 1st Sess.	8
Notes on Revenue Act of 1918 (Part 1) (1919), p. 15	6
Rev. Rul. 58-11, 1958-1 Cum. Bull. 273	8
Senate Hearings on Distributions Pursuant to Orders Enforcing the Antitrust Laws, May 26 and 27, 1959	8
S. Rep. No. 1052, 82d Cong., 1st Sess., pp. 1-4 (2 U.S.C. Cong. & Adm. Service (1951) 2598-2602)	6
S. Rep. No. 1567, 75th Cong., 3d Sess., p. 28 (1939-1 Cum. Bull. (Part 2) pp. 779, 785)	7
T. D. 2706, 20 Treasury Decisions, Internal Revenue, 348 (1918)	6
Treasury Regulations 45 (1919 ed.), Art. 47	6

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 384

AMERICAN NATURAL GAS COMPANY, ET AL.,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. 21-33) is reported at 220 F. 2d 220.

JURISDICTION

The judgment of the Court of Claims was entered on June 8, 1960. (R. 51.) The petition for a writ of certiorari was filed on September 3, 1960. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1255.

QUESTION PRESENTED

Whether a divestment order of the Securities and Exchange Commission issued under the Public Utility Holding Company Act of 1935, in compliance with which taxpayer sold stock in a subsidiary company at its fair market value, constituted a "requisition or condemnation" of capital assets within the meaning of Section 117(j) of the Internal Revenue Code of 1939.

STATUTES INVOLVED

The relevant provisions of the Internal Revenue Code of 1939 (Sections 112(a), (b) (8); 117 (j)) and of the Public Utility Holding Company Act of 1935 (Sections 1 and 11) are set forth in the Appendix, *infra*, pp. 11-19.

STATEMENT

Following extensive proceedings initiated by the Securities and Exchange Commission in 1940, the Commission, acting pursuant to Section 11 of the Public Utility Holding Company Act, directed, *inter alia*, that petitioner American Natural Gas Company dispose of its ownership of stock in the Detroit Edison Company in accordance with a prescribed time schedule.[1] Ensuing sales resulted in losses. In its consolidated income tax return for 1948, American re-

[1] For a more detailed account of the course of the administrative proceedings, see the opinion below, Pet. 25-27. Note that the Commission first decided in 1941 that taxpayer should dispose of the stock and that taxpayer took six years to come forward with an acceptable plan of divestiture.

ported *capital* losses resulting from sales of the stock in the amount of $16,422,167. Thereafter, it filed claim for refund on the theory that the losses resulted from a compulsory or involuntary conversion (as a result of a requisition or condemnation) of capital assets within the meaning of Section 117(j) of the Internal Revenue Code of 1939, and were therefore deductible as *ordinary* losses. (R. 47-48.) The claim was denied, and suit for refund followed.

The Court of Claims has held that American's sale of stock pursuant to the divestment order of the S.E.C. did not constitute a requisition or condemnation of the stock within the purview of Section 117(j), and it has accordingly dismissed the complaint. (Pet. 21-33.)

ARGUMENT.

The decision below is correct. There is no conflict or any other occasion for further review.

1. The issue here is whether a loss sustained by taxpayer upon the sale of its Detroit Edison stock—the sale having resulted from a divestment order issued by the Securities Exchange Commission under Section 11 of the Public Utility Holding Company Act of 1935, Appendix, *infra*, pp. 14-15—is deductible as an ordinary loss (as claimed by petitioner) or as a capital loss (as held below). Petitioner's claim rests on the suggestion that the sales may be considered a "compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or

condemnation or the threat or imminence thereof)", within the meaning of Section 117(j) of the Internal Revenue Code of 1939, Appendix, *infra*, pp. 11-12.

The court below properly rejected the contention that the divestment order of the Securities and Exchange Commission amounted to "an exercise of the power of requisition or condemnation". The Government did not take the Detroit Edison stock for public use, or for any use at all; on the contrary, taxpayer was directed to dispose of the stock (and did so at its fair market value) because its continued ownership had become unlawful after the passage of the Public Utility Holding Company Act. *North American Co.* v. *S.E.C.*, 327 U.S. 686, 709. A disposition of property by a taxpayer in order to comply with a regulatory act of Congress does not, by any test, constitute a "requisition or condemnation" of the property. See *Mugler* v. *Kansas*, 123 U.S. 623; *Union Bridge Co.* v. *United States*, 204 U.S. 364; *Samuels* v. *McCurdy*, 267 U.S. 188; *Corneli* v. *Moore*, 257 U.S. 491; *United States* v. *Central Eureka Mining Co.*, 357 U.S. 155. As the court below stated (Pet. 27-28, 31):

> The order of the Securities and Exchange Commission was neither a requisition nor a condemnation, nor the threat of either. It was nothing more than an order by the Commission for plaintiffs to dispose of property the possession of which by plaintiffs was prohibited by the Public Utility Holding Company Act. It was an order for plaintiffs to comply with the law. The Act required that "the properties and busi-

ness thereof [of a public utility system] be confined to those necessary or appropriate to the operations of an integrated public utility system"; the Commission thought that American's ownership of the Detroit Edison Company stock was not necessary for this purpose; and, so, it required American to dispose of that the possession of which by it was no longer lawful.

By no means can this be considered an exercise of the power of eminent domain. The United States did not take the property; it did not take it for public use or for any use at all. On the contrary, in ordering the sale of the stock, Congress was exercising, through the Securities and Exchange Commission, its constitutional power to regulate interstate commerce. * * *

* * * *

Plaintiffs say that the term "requisition or condemnation" as used in the Act means something more than the exercise of the power of eminent domain. We do not think it does. It seems clear to us that the words mean the taking or the threat of taking property by some public or quasi-public corporation—by some instrumentality that has the power to do so against the will of the owner, and for the use of the taker. That is the common, well-recognized meaning of those words and there is nothing to indicate that Congress used them in any other sense. * * *

Nothing in the taxing statute or the Public Utility Holding Company Act, their legislative history, or the relevant decisions, supports the view that the issuance of a divestment order by the Securities and Exchange Commission is to be deemed a "requisition or condemnation" of the property. The genesis and

history of the phrase indicate, rather, that it was used in Section 117(j) in its ordinary sense, *i.e.*, to denote a taking for public use.[2] Significantly, the same

[2] The term "requisition" first appeared in an interpretation of gross income under the Revenue Act of 1916, c. 463, 39 Stat. 756, and was expressly confined to cases of "property title to which has been requisitioned for war uses". T.D. 2706, 20 Treasury Decisions, Internal Revenue, 348 (1918). On the basis of this ruling, the Secretary of the Treasury, in 1918, recommended legislation to authorize deductions of amounts received by owners as compensation to replace "property title to which has been requisitioned by the Government". Notes on Revenue Act of 1918, Part 1, submitted by the Secretary of the Treasury, printed for the use of the Committee on Ways and Means (1919), p. 15, cited by the court below. (Pet. 31-32.) The recommendation was not then adopted, but was promulgated as a regulation dealing with property taken by "exercise of the power of requisition or eminent domain". Treasury Regulations 45 (1919 ed.), Art. 47. The ruling was enacted into law by Sections 214(a)(12) and 234(a)(14) of the Revenue Act of 1921, c. 136, 42 Stat. 227, after debates referring only to takings. See 61 Cong. Record, Part 5, pp. 5294, 5296. A provision for nonrecognition of gains in cases of reinvestment of proceeds of involuntary conversions resulting from a requisition or condemnation was placed into the law by Section 203(b)(5) of the Revenue Act of 1924, c. 234, 43 Stat. 253, without further or new definition, to be reenacted thereafter in subsequent statutes in substantially the same language. See Section 112(f) of the Internal Revenue Code of 1939. The last amendment was made by Section 10(2) of the Act of October 31, 1951, c. 661, 65 Stat. 733, revising Section 112(f) to meet certain problems of anticipatory purchases of replacement property and of tracing proceeds of compensation into replaced property. H. Rep. No. 798, 82d Cong., 1st Sess., pp. 1-4; S. Rep. No. 1052, 82d Cong., 1st Sess., pp. 1-4 (2 U.S.C. Cong. & Adm. Service (1951) 2598-2602). In the House debate, Chairman Doughton of the Ways and Means Committee stated that the revisions were occasioned by condemnations of large tracts of real property by the Atomic Energy Commission. 97 Cong. Record, Part 8, p. 10348.

phrase appears in Section 112(f), dealing with non-recognition of gain upon an involuntary conversion of property where the proceeds are expended to acquire similar property, and the decisions involving the application of that section construe the phrase in the same manner as did the court below. *Dear Publication & Radio, Inc.* v. *Commissioner*, 274 F. 2d 656 (C.A. 3d), affirming 31 T.C. 1168; *Credit and Investment Corp.* v. *Commissioner*, 47 B.T.A. 673.

The fact that the sale in question was involuntary, in that it was made in obedience to an order of the S.E.C., does not serve to transform it from a "sale" into a "requisition or condemnation", as those terms are used in Sections 112(f) and 117(j). A compulsory sale is nonetheless a sale within the meaning of the taxing statute (*Helvering* v. *Hammel*, 311 U.S. 504); conversely, an involuntary conversion is not a sale (*Helvering* v. *Flaccus Leather Co.*, 313 U.S. 247). It is notable that Congress has enacted special tax relief provisions dealing with recognition of gain in "Exchanges and Distributions in Obedience to Orders of Securities and Exchange Commission" pursuant to the Public Utility Holding Company Act. Internal Revenue Code of 1939, Supplement R (Sections 371-373). See S. Rep. 1567, 75th Cong., 3d Sess., p. 28 (1939-1 Cum. Bull. (Part 2) 779, 785); 83 Cong. Record, Part 5, p. 1928. If, as taxpayer assumes, sales or exchanges made pursuant to S.E.C. divestment orders must be deemed "requisitions or condemnations" within the purview of Sections 112(f) and

117(j), these special relief provisions would have been largely superfluous.[3]

2. Taxpayer mistakenly asserts (Pet. 8-9) that the decision below "cannot be reconciled" with *Commissioner* v. *Gillette Motor Co.*, 364 U.S. 130, and *Midwest Motor Express* v. *Commissioner*, 251 F. 2d 405 (C.A. 8th), certiorari denied, 358 U.S. 875. Those cases have no bearing upon the issue here presented. Unlike the instant case, they involved a conceded taking of property for public use—a wartime seizure of the taxpayer's transportation facilities by the Director of the Office of Defense Transportation pursuant to a Presidential Order to "take possession and assume control of" such facilities—and the only question there litigated and decided was whether the

---

[3] Special provision has also been enacted to cover sales and exchanges to effectuate policies of the Federal Communications Commission. 1939 Code, Section 112(m). The 1954 Internal Revenue Code added special provisions covering sales of property to comply with acreage limitation provisions of federal reclamation laws (Section 1033(d)); livestock destroyed or sold because of disease (Section 1033(e)), and divestments pursuant to the Bank Holding Company Act of 1956 (Sections 1101-1103). Proposals to add specific provisions for nonrecognition of gain on divestments pursuant to anti-trust decrees have been made at least since 1947 on the ground that such divestments are not included in involuntary conversions as a result of requisitions or condemnations. House Hearings, Revenue Revisions of 1947-1948, Part 3, pp. 1100-1404, 1592-1594; House Hearings, General Revenue Revision of 1953, Part 2, pp. 1325-1326; H. Rep. No. 1128, 86th Cong., 1st Sess.; Senate Hearings on Distributions Pursuant to Orders Enforcing the Antitrust Laws, May 26 and 27, 1959. See Rev. Rul. 58-11, 1958-1 Cum. Bull. 273.

"property" seized constituted a "capital asset" within the meaning of Section 117(j).[4] In each case it was held that the Government had seized only the right to the use of the taxpayer's property, that such right was not a "capital asset", and that the compensation received was in the nature of rent taxable as ordinary income. The Detroit Edison stock which taxpayer sold was concededly a "capital asset", and the only issue here is whether the divestment order pursuant to which the stock was sold by taxpayer constituted a "requisition or condemnation" of the stock by the S.E.C. As to that issue, the answer, as indicated above, seems plain. Taxpayer does not come within the statutory terms and it accordingly has no basis for claiming that its capital loss is one which has been granted special tax treatment.

---

[4] Thus at the outset of its opinion in *Gillette*, this Court stated the issue to be whether a sum received by the taxpayer "as compensation for the temporary taking by the Government of its business facilities during World War II" represented ordinary income or capital gain; and it proceeded to point out (p. 133) that "the fact that something taken by the Government is property compensable under the Fifth Amendment does not answer the entirely different question" of whether the property taken is a "capital asset".

Similarly, in *Midwest*, the Eighth Circuit stated (p. 412): "That there was a 'taking' within the meaning of the Fifth Amendment is conceded but that 'taking' should not be allowed to obscure the characteristics [capital versus noncapital nature] of what was taken by the government or received in lieu thereof by petitioner."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

HARRY BAUM,
JOSEPH KOVNER,
Attorneys.

NOVEMBER, 1960

APPENDIX

Internal Revenue Code of 1939:

SEC. 112. RECOGNITION OF GAIN OR LOSS.

(a) *General Rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) *Exchange Solely in Kind.*—

* * * *

(8) *Exchanges and distributions in obedience to orders of Securities and Exchange Commission.*—In the case of any exchange or distribution described in section 371, no gain or loss shall be recognized to the extent specified in such section with respect to such exchange or distribution.

* * * *

(26 U. S. C. 1952 ed., Sec. 112.)

SEC. 117. CAPITAL GAINS AND LOSSES.

* * * *

(j) [as added by Sec. 151(b) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Gains and Losses From Involuntary Conversion and From the Sale or Exchange of Certain Property Used in the Trade or Business.*—

(1) *Definition of property used in the trade or business.*—For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), held for more than

6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(2) *General rule.*—If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 6 months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains and losses described therein shall be included only if and to the extent taken into account in computing net income, e cept that subsections (b) and (d) sh not apply.

(B) Losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or capital assets. held for more than 6 months shall be considered losses from a compulsory or involuntary conversion.

* * * * *

(26 U.S.C. 1952 ed., Sec. 117.)

Public Utility Holding Company Act of 1935, c. 687, 49 Stat. 803:

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

Section 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective

control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

* * * *

(c) When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

* * * *

(15 U. S. C. 1958 ed., Sec. 79a.)

SIMPLIFICATION OF HOLDING-COMPANY SYSTEMS

Sec. 11. (a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company therof, the relationships among the companies in the holding-company system of every such company and the character of the

interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitable distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1948:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however*, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the pro-

visions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist: Any order made under this subsection shall be subject to judicial review as provided in section 24.

* * * *

(d) The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce compliance with any order issued under subsection (b). In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or

companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b), the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commision) in the reorganization.

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and oppor-

tunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

* * * * *

(15 U.S.C. 1958 ed., Sec. 79k.)